IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 603 OF 1988

1. Hari Rama Batawale,
   (since deceased by his heirs)
   (1-a) Smt.Laxmibai Hari Batavale.
   (1-b) Parvati Malu Batavale.
   (1-c) Namdeo Malu Batavale.
   (1-d) Janardan Malu Batavale.
   (1-e) Laxmibai Bhagoji Bhogale.
2. Tukaram Hari Batavale.
3. Krishna Hari Batavale.
4. Smt.Shevanta Krishna Batavale. ... Appellants.
   (Org.Defendants Nos.1 to 4)

Versus.

1. Mahadeo Deoji Gambhir.
   (since deceased by his heirs)
   1-1. Bhogoji Mahadeo Gambhir.
   residing at Patil Chawl/
   Niwas Cutting No.5, Dhobi
   Ghat, Shriram Nagar,
   Malad (East), Mumbai 400 097.

   1-2. Smt.Parvati Mahadeo Gambhir,
   residing at Patil Chawl/
   Niwas, Cutting No.5, Dhobi
   Ghat, Shriram Nagar, Malad
   (East), Mumbai 400 097.

   1-3. Smt.Sushila Parshuram Bhawud,
   residing at Village Tamde,
   Taluka: Tala, Dist.Raigad.

   1-4. Shyam Mahadeo Gambir,
   residing at village Shenate
   Post-Taluka: Tale,
   District Raigad.

2. Laxman Hati Batavale.
   (Appeal stand refused vide Registrar's
   order dated 14.1.2004.) ... Respondents

Shri A.S.Khandeparkar for the Appellants.

Ms.Seema Sarnaik for the Respondent No.1.

CORAM : ABHAY S. OKA, J.

DATED : 6th & 7th April, 2005.

ORAL JUDGMENT:

1. On 17th February 1989, this Second Appeal was admitted by this Court by passing the following order:

> "Parties by Counsel. They are heard. Admitted - the substantial question of law being whether in the facts and circumstances of the case, Respondent was entitled to the injunction decreed in his favour ?"

2. I have heard the learned Counsel appearing for the parties on the substantial question of law as reflected in the aforesaid order.

3. The Appellants are the original Defendants Nos.1 to 4 in a suit simplicitor for injunction filed by the Respondent No.1-Plaintiff. The suit for injunction relates to agricultural lands. The original Plaintiff claims that he was in possession of the suit land and the Appellants were trying to disturb his possession of the suit land. The suit was contested by the Appellants by filing Written Statement. The case of the Appellants is that out of the suit land, Revision Survey No.18/9 was in possession of the father of the Appellant No.1 and after abolition of Khoti Act father of the Appellant

No.1 paid price and became owner of the suit land. The Appellants claim that they were in possession of the suit land.

4. The trial Court decreed the suit by granting decree for perpetual injunction. In the Appeal preferred by the Appellants, the said decree has been confirmed.

5. Shri Khandeparkar, the learned Counsel appearing for the Appellants submitted that though the suit filed by the Respondent No.1 was simplicitor for perpetual injunction, the suit was based on the title as owner. He submitted that even according to the findings recorded by the Courts below, except for the revenue record no other documentary evidence was produced by the original Plaintiff. He submitted that the revenue record cannot be an evidence of title and therefore, as the original Plaintiff failed to prove his title, decree for perpetual injunction could not have been passed in a suit based on title. He has invited my attention to the plaint as well as the findings recorded by the Courts below.

6. The learned Counsel appearing for the Respondent No.1/Plaintiff has taken me through notes of evidence recorded by the Courts below. The learned Counsel submitted that the suit was simplicitor for injunction based on lawful possession of the original Plaintiff on

the date of institution of the suit. She submitted that the revenue records show the lawful possession of the original Plaintiff on the date of institution of the suit. The learned Counsel further submitted that it was the case of the Appellants/Defendants that their father Rama was a tenant in respect of the suit land and after abolition of Khoti, he had become owner by payment of price. She pointed out that the said contention is not substantiated by the Appellants/Defendants and that is the reason why title of the Respondent has been accepted by the Courts below.

7. I have considered the rival submissions. A perusal of the plaint shows that in paragraph No.1 the original Plaintiff has asserted that the suit lands were in his possession as owner. Except for using the word "owner" there are no other material particulars pleaded in the plaint. The Plaintiff has not come out with the case that he has become owner by virtue of some document of title or by virtue of inheritance. The Defendants have also came out with a very vague case. Though it is stated that the father of the Defendants was a tenant who had acquired the suit lands, no particulars such as date of commencement of tenancy or the date on which acquisition has taken place are pleaded. A specific contention has been raised in the written statement that as no particulars of alleged title have been pleaded by the original Plaintiff in the plaint, the Defendants may

be permitted to file additional written statement after particulars are supplied. It is pertinent to note that an application was made on behalf of the Defendants at Exh.20 calling upon the Plaintiff to submit further and better particulars of title pleaded in the plaint. On 1st September 1982 the learned trial Judge allowed the said Application directing the original Plaintiff to furnish better and further particulars. The original Plaintiff purportedly complied with the said order by filing a reply dated 7th September 1982 which is at Exh.21. The Plaintiff did not give any particulars but stated that the title of the Plaintiff is a matter of evidence. A vague statement is made that the suit lands were in possession of the Plaintiff from the days of his forefathers. An application was made by the Defendant at Exh.23 pointing out that better and further particulars were not given by the original Plaintiff in compliance with the order dated 1st September 1982. The learned trial Judge passed an order on 16th September 1982 on the said Application at Exh.23 observing that the question will be considered at the time of final hearing. There is no reference to the Application at Exh.23 in the Judgment delivered by the trial Court. Even in the examination-in-chief of the Plaintiff apart from saying that he is in possession of the suit land from the time of his father, he has not given any particulars about title claimed by him. All that he stated in the evidence was that he has produced 7x12

extract and that his name is shown in the Kabjedar column of the 7x12 extract. Therefore, in the evidence the original Plaintiff claimed that he was in possession from the days of his father without pleading anything about his title.

8. The trial Court has framed issue No.1 regarding title. However, in paragraph No.6 of the Judgment, the trial Court has held that the Plaintiff was in possession of the suit land on the date of institution of the suit. While answering issue Nos.1, 4 and 5 the learned trial Judge held as under:

> "Hence the Plaintiff is proved his possession on the day of the suit and he is entitled to injunction."

In paragraph 9 the Appellate Court has held thus:

> "9. The very fact that the Defendants have challenged the ownership title as well as actual possession of the Plaintiff in the suit property, is in itself sufficient to infer obstruction made by them to the Plaintiff's peaceful enjoyment and possession therein. This aspect would also establish that the Plaintiffs suit for perpetual injunction

simplicitor is indeed maintainable in law."

Though in paragraph 8, the Appellate Court has referred to "ownership title" what is stated in paragraph 9 is crystal clear. The finding recorded by the Appellate Court is that the original Plaintiff was in actual possession of the suit property on the date of commencement of the suit and that is why the Appellate Court held that the suit of the original Plaintiff for perpetual injunction simplicitor is maintainable in law.

9. Thus it is crystal clear that there is no finding recorded by the Courts below that the Appellant/Plaintiff has established ownership. The findings appear to be on the basis of the consistent entries in the revenue records that the original Plaintiff has proved his lawful possession on the date of institution of the suit. In my view though issues framed by the trial Court and the points for determination framed by the Appellate Court refer to the title, what has been decided by the Courts below is issue relating to the lawful possession on the date of institution of the suit. It is to be noted here that the Defendants did not establish any better title than the original Plaintiff and that is the reason why the Appellate Court held that the suit simplicitor for perpetual injunction was maintainable.

10. So far as the finding regarding possession of the suit land on the date of institution of the suit is concerned, the said finding is based on the documentary evidence in the form of entries in the revenue records for sufficiently long period in the name of the original Plaintiff. This was not a case where the original Plaintiff was trying to seek injunction against a co-owner or against a person having better title. The finding of fact on the issue of possession cannot be disturbed in a Second Appeal. As stated earlier, the Appellate Court rightly held that the suit simplicitor for perpetual injunction was maintainable.

11. In this view of the matter no fault can be found with the decree of the trial Court granting perpetual injunction and the Appeal deserves to be dismissed. However, it is clarified that there is no finding recorded by the Courts below as regards the ownership or title of the Plaintiff and the decree passed by the trial Court is on the ground that the Plaintiff has proved his possession on the date of institution of the suit and the Defendants have failed to established that they have better title than the original Plaintiff. Subject to the observation made above, the Second Appeal is dismissed with no order as to costs.

Judge.